

JS 44 (Rev. 06-74)

CIVIL COVER SHEET

17-CV-3854

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Franklyn Ramlochan

(b) County of Residence of First Listed Plaintiff New Castle, DE

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Scott M. Pollins, Pollins Law, 800 Westdale Ave., Swarthmore, PA 19081, 610-896-9909

DEFENDANTS

Raliserve, Inc.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Paul R. Klein, Thompson Coburn LLP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Title VII, 42 USC Section 1981

Brief description of cause:

Wrongful termination due to race/color/ethnicity discrimination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ Unliquidated

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

8/28/17

SIGNATURE OF ATTORNEY OF RECORD

AUG 28 2017

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AUG 28 2017

HB

UNITED STATES DISTRICT COURT

17**3854**

FOR THE DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 21 Beacon Lane, New Castle, DE 19720

Address of Defendant: 1691 Phoenix Blvd. Ste. 250, Atlanta, GA 30349

Place of Accident, Incident or Transaction: Eddystone, Delaware County, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☐

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases
(Please specify) _____

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify) _____
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Scott M. Pollins, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought

DATE: 8/28/17 Scott M. Pollins Attorney-at-Law PA 76334 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 8/28/17 Scott M. Pollins Attorney-at-Law PA 76334 Attorney I.D.#

AUG 28 2017

HB

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Franklyn Ramlochan

Railserve, Inc.

:
:
:
:
:

CIVIL ACTION

NO.

17

3854

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

8/28/17
Date

Scott M. Pollins
Attorney-at-law

Plaintiff Franklyn Ramlochan
Attorney for

610-896-9909
Telephone

610-896-9910
FAX Number

scott@pollinslaw.com
E-Mail Address

AUG 28 2017

HB

\$400

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FRANKLYN RAMLOCHAN

Plaintiff

v.

RAILSERVE, INC.

Defendant

CIVIL ACTION NO.

17**3854**

JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

1. Plaintiff, Franklyn Ramlochan (Ramlochan), brings this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*, as amended by the Civil Rights Act of 1991 (Title VII), 42 U.S.C. § 1981 and the Civil Rights Act of 1866 (Section 1981) and the Pennsylvania Human Relations Act, 43 Pa.C.S.A. § 951 *et seq.* (PHRA). Ramlochan seeks back pay, front pay, loss of benefits, compensatory and punitive damages, interest, costs, negative tax consequence damages, injunctive and declaratory relief and attorneys' fees from Defendant, Railserve, Inc. (Railserve).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Ramlochan's federal claims pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4) and 42 U.S.C. § 2000e-5(f). Furthermore, this Court has jurisdiction over Ramlochan's state law claim pursuant to 28 U.S.C. § 1367(a).

3. Ramlochan has exhausted all remedies available to him as set forth in Title VII and the PHRA, by filing a timely charge of employment discrimination with the Pa. Human Relations Commission, which charged was dual filed with the Equal Employment Opportunity Commission, and Ramlochan has filed this action within ninety (90) days of the receipt of the notice of right-to-sue.

4. The unlawful acts and practices of Railserve were committed within or upon the direction of its agents or by Railserve itself within the Commonwealth of Pennsylvania.

III. PARTIES

5. Ramlochan is a dark skinned adult male from Trinidad who currently resides in Delaware.

6. Railserve is a Delaware corporation with headquarters located in Atlanta, Georgia. Railserve is a leading provider of in-plant rail switching and associated services with over 65 locations in the United States and Canada and more than 1,000 employees. Railserve uses its own locomotives and employees to safely move railcars within industrial, manufacturing and production plants. Railserve also provides other services, including rail car loading, rail car unloading, track maintenance, inspection and repair.

7. During the time Ramlochan worked for Railserve, he worked at a Railserve facility in Eddystone, Delaware County, Pennsylvania.

8. Railserve is an employer within the meaning of Title VII and the PHRA.

IV. FACTS

9. Ramlochan began working for Railserve in approximately February 2014 as a crew leader at Railserve's Eddystone facility.

10. In June 2014, Railserve issued an employee warning notice to Ramlochan and suspended him for two days due to one of his crew member's failure to open a vent on a rail car.

11. Over the next several months, Railserve failed to similarly discipline white American born crew leaders Thomas Fuller (Fuller) and Larry Williams (Williams) for similar violations to the one Railserve disciplined and suspended Ramlochan for.

12. In approximately late July/early August 2014, Ramlochan complained to site leader Matthew Palmer (Palmer), white, that his June 2014 suspension was unfair and asked for it to be rescinded. When Ramlochan complained to Palmer, he asked him 'what is it, my looks?'

13. Palmer later made a comment that 'they should have closed the doors long ago.' Ramlochan believed Palmer was referring to immigrants when he said this.

14. In approximately September 2014, Railserve issues site specific rules for the Eddystone facility.

15. Pursuant to Railserve's site specific rules, a crew leader or his designee will verify that every vent valve is completely open and oil is flowing before leaving the rack area.

16. On approximately November 8, 2014, Ramlochan designated one of his crew members to supervise offloading while he attended to an emergency at a different part of the facility. The crew member failed to open a valve, which resulted in a train not being fully drained.

17. On approximately November 9, 2014, Railserve suspended Ramlochan without pay for this incident.

18. On approximately November 12, 2014, Ramlochan prepared a written complaint to Tim Pullen (Pullen), white, Vice President of HR. In his complaint,

Ramlochan stated that he believed he was being singled out for unfair treatment based on his race, color and national origin. Ramlochan's counsel sent the complaint to Pullen.

19. After receiving Ramlochan's discrimination complaint, Pullen investigated what allegedly led to Ramlochan being suspended in early November 2014.

20. On December 3, 2014, Ramlochan's counsel sent Pullen a letter reiterating Ramlochan's belief that he was being treated differently due to discrimination.

21. On December 9, 2014, Railserve's outside counsel responded to Ramlochan's counsel by faxing and express mailing a letter to her. In his letter, Railserve's outside counsel stated that Railserve had completed its investigation and was going to communicate its final decision to Ramlochan when Railserve received Ramlochan's counsel's letter. Railserve's final decision was to terminate Ramlochan.

22. Railserve's counsel's letter included additional pretextual reasons attempting to bolster its allegedly legitimate reasons for terminating Ramlochan.

22. In addition to treating white male American born crew leaders Fuller and Williams better than Ramlochan for similar incidents, Railserve also treated white male American born crew leaders Tom Everly (Everly) and Bob Everett (Everett) better than Ramlochan for similar or more serious incidents to what Railserve claimed it disciplined and terminated Ramlochan for.

23. On a shift when Everly was the crew leader, a rail car was not completely unloaded and sent from the facility nearly full. Railserve did not suspend or terminate Everly for this incident.

24. On a shift when Everett was the crew leader, a gangway was left down and the train ripped it off. Railserve did not suspend or terminate Everett for this incident.

25. Ramlochan was disciplined because of his race/color/national origin/ethnicity and subsequently because of his race/color/national origin/ethnicity and/or because he complained about discrimination.

26. Ramlochan was terminated in retaliation for his complaints of discrimination and/or because of his race/color/national origin/ethnicity.

27. Railserve engaged in intentional discrimination and retaliation against Ramlochan with malice or reckless indifference to his rights under Title VII and Section 1981.

V. CLAIMS

COUNT I – RACE/COLOR DISCRIMINATION
TITLE VII, SECTION 1981 and THE PHRA

28. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. The acts, failures to act, practices and policies of Railserve set forth above constitute race/color discrimination in violation of Title VII, Section 1981 and the PHRA.

30. As a direct and proximate result of Railserve's illegal discriminatory conduct, Ramlochan has suffered harms and losses in the form of back pay and benefits, front pay and benefits and emotional distress including, but not limited to, anxiety, stress, humiliation and embarrassment.

WHEREFORE, Ramlochan respectfully demands judgment in his favor and against Railserve for compensatory damages for emotional distress, mental anguish, humiliation and embarrassment, back pay, reinstatement or front pay, lost benefits, negative tax consequence damages, punitive damages (under Title VII and Section 1981 only), attorney's fees plus costs, declaratory relief that the conduct engaged in by

Railserve violated Ramlochan's civil rights, and such other relief as the Court shall deem proper.

COUNT II – NATIONAL ORIGIN/ETHNICITY DISCRIMINATION
TITLE VII, SECTION 1981 and THE PHRA

31. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

32. The acts, failures to act, practices and policies of Railserve set forth above constitute national origin/ethnicity discrimination in violation of Title VII, Section 1981 and the PHRA.

33. As a direct and proximate result of Railserve's illegal discriminatory conduct, Ramlochan has suffered harms and losses in the form of back pay and benefits, front pay and benefits and emotional distress including, but not limited to, anxiety, stress, humiliation and embarrassment.

WHEREFORE, Ramlochan respectfully demands judgment in his favor and against Railserve for compensatory damages for emotional distress, mental anguish, humiliation and embarrassment, back pay, reinstatement or front pay, lost benefits, negative tax consequence damages, punitive damages (under Title VII and Section 1981 only), attorney's fees plus costs, declaratory relief that the conduct engaged in by Railserve violated Ramlochan's civil rights, and such other relief as the Court shall deem proper.

COUNT III – RETALIATION
TITLE VII, SECTION 1981 and THE PHRA

34. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

35. The acts, failures to act, practices and policies of Railserve set forth above constitute retaliation in violation of Title VII, Section 1981 and the PHRA.

36. As a direct and proximate result of Railserve's illegal retaliatory conduct, Ramlochan has suffered harms and losses in the form of back pay and benefits, front pay and benefits and emotional distress including, but not limited to, anxiety, stress, humiliation and embarrassment.

WHEREFORE, Ramlochan respectfully demands judgment in his favor and against Railserve for compensatory damages for emotional distress, mental anguish, humiliation and embarrassment, back pay, reinstatement or front pay, lost benefits, negative tax consequence damages, punitive damages (under Title VII and Section 1981 only), attorney's fees plus costs, declaratory relief that the conduct engaged in by Railserve violated Ramlochan's civil rights, and such other relief as the Court shall deem proper.

Respectfully submitted,

By: SMP2861
Scott M. Pollins - Pa. Atty. Id. No. 76334
Pollins Law
800 Westdale Avenue
Swarthmore, PA 19081-2311
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Attorney for Plaintiff, Franklyn Ramlochan

Date: 8/28/17